UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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BRIGITTE MUELLER,

Plaintiff,

v.

THE LINCOLN NATIONAL LIFE INSURANCE COMPANY,

Defendant.

No. 2:23-cv-00919 WBS JDP

MEMORANDUM OF DECISION

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Plaintiff Brigitte Mueller brought this action against defendant Lincoln National Life Insurance Company alleging that defendant violated the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a), when it failed to pay accidental death benefits following the death of plaintiff's husband.

On January 23, 2024, the court held a hearing pursuant to Kearney v. Standard Insurance Co., 175 F.3d 1084, 1089 (9th Cir. 1999) (en banc). The following memorandum constitutes the court's findings of fact and conclusions of law pursuant to

Federal Rule of Civil Procedure 52(a).

I. Factual and Procedural Background

Kenneth Mueller was employed as the Chief Financial Officer of Raley's, a supermarket chain. (See Admin. Record ("Record") (Docket No. 25-1) at 109, 160.) As part of his employment, he (and other Raley's executives) traveled by private plane to various Raley's store locations. (Id.) Raley's encouraged Mr. Mueller to receive his pilot's license and paid for Mr. Mueller to receive flying lessons. (See id. at 109-10, 160, 223.)

On September 4, 2022, Richard Conte (Raley's Chief Pilot) and Mr. Mueller were flying in a private twin-engine aircraft. (See id. at 109, 160.) Though Mr. Mueller had acquired his pilot's license by this time, he was not yet qualified to fly this type of aircraft and was with Mr. Conte for the purpose of learning to fly the aircraft. (See id. at 110, 128, 160.) The aircraft crashed and both Mr. Mueller and Mr. Conte suffered fatal injuries. (See id. at 110, 122, 128-30, 160.) The National Transportation Safety Board investigated the incident and found that both the "flight instructor and pilot receiving instruction were fatally injured," noting that the crash involved two "crew" injuries and zero "passenger" injuries. (Id. at 128.)

The aircraft involved in the accident was managed by R & T Aviation, LLC. (Id. at 107.) Mr. Conte routinely provided aircraft management services to Raley's under the auspices of R & T Aviation. (See id. at 107, 109.) For previous flights taken for educational purposes by Mr. Mueller and Mr. Conte, Raley's

had reimbursed R & T Aviation for the fuel costs. (See id. at 107, 155-57.) R & T Aviation planned to bill Raley's for the fuel used on September 4, 2022, and would have done so had the plane not crashed. (See id. at 107.)

Plaintiff sought accidental death benefits pursuant to Raley's employee life insurance policy, which was funded and administered by defendant Lincoln National Insurance Company (see id. at 167, 227, 423, 451-53) and governed by ERISA, 29 U.S.C. §§ 1001 et seq.

Defendant denied benefits, stating that Mr. Mueller was a student pilot and therefore fell under the policy's aircraft exclusion. (See Record at 93-95.) Plaintiff pursed two appeals of the decision through defendant's appeal department, both of which were unsuccessful. (See id. at 25-30, 97-101, 233.)

II. Standard of Review

ERISA allows a participant or beneficiary to bring a civil action to recover plan benefits. 29 U.S.C. § 1132(a)(1)(B); Metro. Life Ins. Co. v. Glenn, 554 U.S. 105, 108 (2008). In ERISA actions challenging denials of benefits under 29 U.S.C. § 1132(a)(1)(B), "[d]e novo is the default standard of review." Abatie v. Alta Health & Life Ins. Co., 458 F.3d 955, 963 (9th Cir. 2006) (en banc) (internal citations omitted); see also Kearney, 175 F.3d at 1089.

The parties agree that de novo review limited to the existing administrative record is appropriate here. See Kearney, 175 F.3d at 1089-90. "De novo review can best be understood as essentially a bench trial 'on the papers' with the District Court acting as the finder of fact." Zelhofer v. Metro. Life Ins. Co.,

No. 2:16-cv-00773 TLN AC, 2022 WL 525562, at *11 (E.D. Cal. Feb. 22, 2022) (internal quotation marks omitted); see also Kearney, 175 F.3d at 1094. When review is de novo, "the court does not give deference to the claim administrator's decision, but rather determines in the first instance" if the claimant has "adequately established" that she is entitled to benefits "under the terms of the plan." See Muniz v. Amec Constr. Mgmt. Inc., 623 F.3d 1290, 1295–96 (9th Cir. 2010).

III. Discussion

At issue here is the application of an exception to the policy's aircraft exclusion.

The aircraft exclusion provides: "No benefits are payable for any loss that is contributed to or caused by . . . boarding, leaving or being in or on any kind of aircraft." (Raley's Group Life Insurance Policy ("Policy") (Docket No. 25-2) at AEX-1.)

The exception to the aircraft exclusion provides: "[T]his exclusion will not apply if the Covered Person is [1] a fare paying passenger on a commercial aircraft or [2] traveling as a passenger in any aircraft that is owned or leased by or on behalf of the Sponsor." (Id. (emphasis added).)

Plaintiff argues that decedent falls under the second clause of the exception. Thus, plaintiff must establish both that decedent was a passenger, and that the aircraft was owned or leased by or on behalf of Raley's.

In determining whether a plaintiff is entitled to coverage under ERISA, the Ninth Circuit "has generally applied federal common law to questions of insurance policy

interpretation." Dowdy v. Metro. Life Ins. Co., 890 F.3d 802, 807 (9th Cir. 2018) (citing Padfield v. AIG Life Ins. Co., 290 F.3d 1121, 1125 (9th Cir. 2002)). However, courts may also "borrow from state law where appropriate" and look to "the interests served by ERISA's regulatory scheme." Id. at 807-08 (internal quotation marks omitted). "[I]t is 'the policy of [ERISA] to protect . . . the interests of participants in employee benefit plans and their beneficiaries' and to 'increase the likelihood that participants and beneficiaries . . . receive their full benefits.'" Id. at 808 (quoting 29 U.S.C. §§ 1001(b), 1001b(c)(3)).

The terms of an ERISA plan "should be interpreted 'in an ordinary and popular sense as would a [person] of average intelligence and experience.'" McDaniel v. Chevron Corp., 203 F.3d 1099, 1110 (9th Cir. 2000) (quoting Richardson v. Pension Plan of Bethlehem Steel Corp., 112 F.3d 982, 985 (9th Cir. 1997)) (alteration in original). "'When disputes arise, courts should first look to explicit language of the agreement to determine, if possible, the clear intent of the parties.'" Gilliam v. Nevada Power Co., 488 F.3d 1189, 1194 (9th Cir. 2007) (quoting Richardson, 112 F.3d at 985). "The intended meaning of even the most explicit language can, of course, only be understood in the light of the context that gave rise to its inclusion." Id. (internal quotation marks omitted).

Coverage exclusions must be interpreted narrowly, Dowdy, 890 F.3d at 810, while "exceptions to exclusions are broadly construed in favor of the insured," E.M.M.I. Inc. v. Zurich Am. Ins. Co., 32 Cal. 4th 465, 471 (2004).

The insured has the burden of proving that an exception to an exclusion applies. See Aydin Corp. v. First State Ins. Co., 18 Cal. 4th 1183, 1190-92 (1998), as modified on denial of reh'g (Oct. 14, 1998) (under California law, burden is on the insured to prove applicability of exception to exclusion); Aeroquip Corp. v. Aetna Cas. & Sur. Co., 26 F.3d 893, 894 (9th Cir. 1994) (same); Williams v. Standard Ins. Co., No. 1:15-cv-00416 DAD EPG, 2017 WL 1398819, at *14 (E.D. Cal. Apr. 19, 2017); (placing burden on insured to prove applicability of exception to exclusion in ERISA case).

A. Decedent was a "passenger" under the plan.

Defendant argues that the court should interpret the term "passenger" to exclude student pilots like decedent. This interpretation appears to comport with the standard dictionary definition of the term. See Passenger (n.), Oxford English Dictionary Online (Dec. 2023), https://doi.org/10.1093/OED/1150981152 (defining "passenger" as "[a] person in or on a conveyance other than its driver, pilot, or crew").

However, another possible interpretation of "passenger" refers to every individual in a particular vehicle or aircraft. As plaintiff points out, aircraft and vehicles are often referred to by the number of passengers they carry in a manner that includes all occupants, including the driver or pilot. See Prudential Ins. Co. of Am. v. Barnes, 285 F.2d 299, 300-01 (9th Cir. 1960) ("in common parlance the term 'passenger' is often used broadly" such that "on[e] finds references to 'six-passenger' cars and 'four-passenger' planes"); Cont'l Cas. Co. v.

Warren, 152 Tex. 164, 169 (1953) ("the mere word 'passenger' cannot be said to exclude the pilot" because "common parlance undoubtedly uses it at times in the sense of 'occupant' of a private vehicle, as in the familiar expression 'a six-passenger automobile'"). Further, "[w]hile the term pilot traditionally signifies the person at the controls of an airplane, 'such definition is not mutually exclusive' with a broader definition of 'passenger' that includes all people within an aircraft." Cal. Ins. Guar. Ass'n v. Petrisevac, No. D038620, 2002 WL 32638, at *3 (Cal. Ct. App. Jan. 11, 2002) (quoting N. Am. Specialty Ins. Co. v. Foth, 861 F. Supp. 709, 712 (N.D. Ill. 1994)); see also Asher v. Battelle Mem'l Inst., No. 2:15-cv-1097, 2016 WL 5661695, at *5 (S.D. Ohio Sept. 30, 2016) (a pilot could be a passenger under insurance policy because policy contained "no language . . . which would preclude broadly interpreting the word 'passenger' as meaning any person, including a person acting as a pilot or crew member, who is traveling in . . . the aircraft").

Consistent with this possible interpretation, the court has identified numerous cases involving insurance policies that defined "passenger" to include all individuals within the plane, with some even explicitly including pilots and crew. See, e.g., U.S. Aviation Underwriters, Inc. v. Fitchburg-Leominster, Flying Club, Inc., 42 F.3d 84, 85 (1st Cir. 1994) (involving insurance policy that defined "passenger" as "anyone who enters your aircraft to ride in or operate it"); Ranger Ins. Co. on Behalf of Bernstein v. Est. of Mijne, 991 F.2d 240, 243 (5th Cir. 1993) (pilot was a passenger under policy that defined "passenger" as "any person who is in the aircraft"); Littrall v. Indem. Ins. Co.

of N. Am., 300 F.2d 340, 344 (7th Cir. 1962) (involving insurance policy that defined "passenger" as "any person or persons while in the aircraft for the purpose of flight or attempted flight therein"); Asher, 2016 WL 5661695, at *4 (pilot could be considered a passenger under insurance policy that excluded injuries resulting from "riding as a passenger in, entering, or exiting any aircraft while acting or training as a pilot or crew member"); Old Republic Ins. Co. v. San Antonio Piper, Inc., No. CV SA-14-CA-002-FB, 2014 WL 12496572, at *2 (W.D. Tex. July 21, 2014) (pilot was a passenger under policy that defined "passenger" as "any person, in, on or boarding the aircraft for the purpose of riding or flying therein or alighting therefrom after a flight or attempted flight therein, including pilot(s) or crew member(s)").

Here, the insurance policy provides no definition of "passenger" applicable to the exclusion at issue. However, examining the policy as a whole and construing the exception to the aircraft exclusion broadly, as the court must, the court concludes that a student pilot such as decedent qualifies as a "passenger."

The court begins with the sentence at issue, which reads: "[T]his exclusion will not apply if the Covered Person is [1] a fare paying passenger on a commercial aircraft or [2] traveling as a passenger in any aircraft that is owned or leased by or on behalf of the Sponsor." (Policy at AEX-1 (emphasis added).) The first clause modifies the word passenger with the phrase "fare paying," thereby explicitly excluding crew members and pilots, who do not pay fare. In contrast, the second clause

contains no word or phrase that modifies "passenger." If defendant intended to limit the scope of "passenger" in the second clause, it could have included such a limitation. It did not do so.

The court next looks to other uses of the term "passenger" in the policy. The policy contains a Disappearance Benefit and Common Carrier Benefit, which both use the term "Passenger." Both provisions are appended by the following definition: "With respect to this provision, 'Passenger' is defined as an individual other than a pilot, operator or crew member who is riding in or on, boarding, or dismounting from a public conveyance." (Policy at ADD-3.)

While this definition specifically excludes anyone acting as a "pilot, operator or crew member," it only applies to these specific provisions of the policy. The Exclusions provision, in contrast, is silent as to the definition of "passenger." Further, in the Disappearance and Common Carrier provisions, "Passenger" is capitalized, indicating that the specific given definition of the term applies. The term is not capitalized when used in the aircraft exclusion, suggesting that a different definition applies.

If defendant wanted to exclude pilots and crew from the meaning of "passenger" within the Exclusions section, it could have, as it did in the Disappearance and Common Carrier provisions. In fact, the Exclusions section provides specific definitions of other terms ("Participation" and "Riot") but fails to provide any definition of the term "passenger." From this omission, the court concludes that defendant intended a different

sense of "passenger" -- namely, the broader meaning that includes all individuals on the aircraft -- to apply.

Importantly, even if the court applied the definition of passenger that appears in the Disappearance and Common Carrier provisions, the aircraft exclusion would be ambiguous, as that definition does not explicitly exclude "student pilots." Foremost Insurance Co. v. Sheppard, 610 F.2d 551 (8th Cir. 1979), is instructive. There, the insurance policy at issue provided coverage for "passengers," which it defined to exclude crew and pilots. Id. at 554. "Crew" and "pilot" were defined as "any person or persons involved in the operation of the aircraft while in flight." Id. The Eighth Circuit held that the policy was ambiguous as to whether student pilots were covered because the policy did not explicitly include "student pilots" in its definitions of "pilot" and "crew." Id. See also Castro v. Fireman's Fund Am. Life Ins. Co., 206 Cal. App. 3d 1114, 1117 (1st Dist. 1988) (coverage exclusion of anyone who "dies as a result of flying as a pilot or crew member of any aircraft" was ambiguous as applied to a student pilot because it would be reasonable to conclude that a student pilot is neither "pilot" nor "crew"). This ambiguity would require the court to adopt the interpretation favoring coverage, leading to the same result. See Blankenship v. Liberty Life Assur. Co. of Bos., 486 F.3d 620, 625 (9th Cir. 2007) (if the court determines an ambiguity exists "after applying the normal principles of contractual construction," then "the interpretation that is most favorable to the insured will be adopted").

One of defendant's stronger arguments pertains to the

purpose of aircraft exclusions in insurance policies. It argues that the purpose of such exclusions is "to insure most people who fly but not those whose profession or hobby is connected with the actual flying of planes and who are therefore normally subject to more repeated risks and risks more directly within their own control." See Prudential Ins. Co., 285 F.2d at 300. This argument finds some support in the Exclusions provision, which excludes from coverage deaths that are in some way the result of the insured's choices or risky behavior, for example alcohol usage, abuse of controlled substances, participation in a crime or riot, self-inflicted injuries, military service, or extreme sports. (See Policy at AEX-1.) However, in contrast to the language from the Prudential case cited by defendant, decedent was not engaged in flying as a "profession or hobby," but merely incidentally to his employment.

It is plausible that the purpose of the aircraft exclusion is as defendant contends; but if so, it was incumbent upon defendant, as the drafter of the plan, to explicitly exclude student pilots. See E.M.M.I. Inc., 32 Cal. 4th at 471 ("the burden rests upon the insurer to phrase exceptions and exclusions in clear and unmistakable language").

The court therefore concludes that decedent qualified as a "passenger" under the exception to the aircraft exclusion.

B. Plaintiff has failed to satisfy her burden to show that the aircraft was "owned or leased by or on behalf of" Raley's.

The analysis does not conclude with the court's finding that decedent qualified as a "passenger" within the meaning of the aircraft exclusion. In order to qualify for the exception to

the aircraft exclusion, the decedent must also have been traveling in an aircraft that was owned or leased by or on behalf of Raley's.

There was no evidence, and plaintiff does not contend, that the aircraft in which he was traveling at the time of the accident was owned by Raley's. To the contrary, although there is no evidence of who owned it, the parties seem to assume it was owned by someone else. Defense counsel even suggested at the time of oral argument that public records indicated it was owned by a private attorney in Sacramento. That fact, however, is not part of the record, and the court does not consider it as proven. The question thus becomes whether the aircraft was "leased" by or on behalf of Raley's at the time of the accident. Plaintiff bears the burden of establishing that it was. See Aydin, 18 Cal. 4th at 1190-92; Aeroquip, 26 F.3d at 894; Williams, 2017 WL 1398819, at *14.

Plaintiff argues that the court should construe "leased" to mean "used," and that decedent was using the aircraft on behalf of Raley's in learning to pilot it. The court agrees that decedent was using the aircraft on his employer's behalf. (See Record at 107, 109-10, 155-57, 160, 223.) However, the court rejects plaintiff's unreasonably broad reading of the policy that equates the term "leased" with "used."

Plaintiff cites authority indicating that a lease conveys a right to possess and use property. See, e.g., Lease, Black's Law Dictionary (11th ed. 2019) ("lease" is defined as "[a] contract by which a rightful possessor of [real or personal] property conveys the right to use and occupy the property in

exchange for consideration"). Accepting that definition, no written contract or other document has been presented showing any agreement between the owner or rightful possessor of the aircraft and Raley's that even discusses the aircraft or the use of it. Nor has plaintiff made reference to any oral agreement regarding the use of that aircraft on the fatal day. A lease is the instrument or agreement whereby the right to use is conveyed. Plaintiff has not cited, nor has the court found, any authority indicating that the word "use" can reasonably be substituted for the term "lease."

When asked at oral argument, plaintiff could offer no potential explanation for the purpose of the language "owned or leased by or on behalf of the Sponsor" in the exception to the aircraft exclusion. Defendant argues that its purpose is to provide coverage to Raley's employees while flying in an aircraft for the benefit of Raley's. That does appear to be the logical purpose of this language, i.e., to require a connection between the decedent's presence in the aircraft and their employer's interests. See Gilliam, 488 F.3d at 1194 (in interpreting the plain language of an ERISA contract, courts look to "the context that gave rise to its inclusion"); Dowdy, 890 F.3d at 810 (looking to purpose of exclusion in analyzing its meaning).

The ownership or agreement underlying the use of the aircraft thus appears to have been relevant to the drafter of the policy. If mere usage was adequate, the policy could have so stated. Plaintiff has provided no argument grounded in the terms or purpose of the policy, nor has she cited to any on-point authority, that support the broad reading of the word "lease"

which she urges.

"A policy provision is ambiguous only if it is susceptible to two or more reasonable constructions despite the plain meaning of its terms within the context of the policy as a whole." Northrop Grumman Corp. v. Factory Mut. Ins. Co., 563 F.3d 777, 783 (9th Cir. 2009) (quoting Palmer v. Truck Ins. Exch., 21 Cal. 4th 1109, 1115 (1999)); see also Blankenship, 486 F.3d at 625. The word "lease" is not susceptible to plaintiff's interpretation, which unreasonably strains the plain language of the policy. The court will not artificially create an ambiguity where none exists. See Evans v. Safeco Life Ins. Co., 916 F.2d 1437, 1441 (9th Cir. 1990) ("[i]f a reasonable interpretation favors the insurer and any other interpretation would be strained, no compulsion exists to torture or twist the language of the policy" in plaintiff's favor).

The court therefore concludes that "leased" does not mean "used" for purposes of the policy at issue and will interpret "leased" according to its usual meaning.

There is no evidence whatsoever in the record concerning who owned the plane or whether there was some agreement concerning the use of the plane. There is evidence that Raley's planned to reimburse R & T Aviation for the aircraft's fuel. (See Record at 107.) However, fuel reimbursement alone is plainly inadequate to establish any sort of ownership or lease, whether by Raley's, decedent, or someone else. By way of comparison, an employer might reimburse an employee for fuel when the employee uses their personal car for company business. It would be absurd to conclude that the

employer therefore leased the employee's vehicle.

Plaintiff points out that decedent was the Chief Financial Officer of Raley's and therefore authorized to act on Raley's behalf, including by entering a lease agreement. This point is well taken; however, the mere fact that plaintiff used the plane is still insufficient because the record gives no indication that there was any agreement related to decedent's use. It is entirely possible, for example, that the owner of the aircraft did not authorize Mr. Conte or Mr. Mueller to use the aircraft for an instructional flight.

Because of the dearth of information in the record, the court has no way of discerning the relevant facts. Plaintiff had the option of seeking to supplement the administrative record once this action was initiated, see Collier v. Lincoln Life Assurance Co. of Bos., 53 F.4th 1180, 1186 (9th Cir. 2022), but never availed herself of that option. Had she done so, the court likely would have granted that request because additional information concerning the ownership or lease of the aircraft "is necessary to conduct an adequate de novo review of the benefit decision." See id.

It was incumbent upon plaintiff to provide evidentiary support for her contention that the aircraft was "owned or leased by or on behalf of" Raley's. Plaintiff has plainly failed to meet that burden. Plaintiff has therefore failed to establish both elements required to qualify for the exception to the aircraft exclusion.

IT IS THEREFORE ORDERED that Judgment be entered in favor of defendant Lincoln National Life Insurance Company in

this action.

Dated: January 25, 2024

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE